

1 HELANE L. MORRISON (Cal. Bar No. 127752)
2 MARC J. FAGEL (Cal. Bar No. 154425)
3 CARY S. ROBNETT (Cal. Bar No. 160585)
4 ROBERT S. LEACH (Cal. Bar No. 196191)
leachr@sec.gov
ERIN E. SCHNEIDER (Cal. Bar No. 216114)
schneidere@sec.gov

5 Attorneys for Plaintiff
6 SECURITIES AND EXCHANGE COMMISSION
7 44 Montgomery Street, Suite 2600
8 San Francisco, California 941 04
9 Telephone: (415) 705-2500
10 Facsimile: (415) 705-2501

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN JOSE DIVISION

14 SECURITIES AND EXCHANGE
15 COMMISSION,

16 Plaintiff,

17 vs.

18 JOHN F. GIFFORD,

19 Defendant.

E-filing

RMW

RS

CV 07

6121

[PROPOSED] FINAL JUDGMENT AS TO
DEFENDANT JOHN F. GIFFORD

[PROPOSED] FINAL JUDGMENT AS TO DEFENDANT JOHN F. GIFFORD

The Securities and Exchange Commission having filed a Complaint and Defendant John F. Gifford having entered a general appearance; consented to the Court's jurisdiction over Defendant and the subject matter of this action; consented to entry of this Final Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction); waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 17(a)(3) of the

1 Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)(3)] in the offer or sale of any
2 security by the use of any means or instruments of transportation or communication in interstate
3 commerce or by use of the mails, directly or indirectly to engage in any transaction, practice, or
4 course of business which operates or would operate as a fraud or deceit upon the purchaser.

5 II.

6 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and
7 Defendant's agents, servants, employees, attorneys, and all persons in active concert or
8 participation with any of them, who receive actual notice of this Final Judgment, by personal
9 service or otherwise, and each of them, are permanently enjoined and restrained from aiding and
10 abetting any violation of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules
11 12b-20, 13a-1, 13a-11, and 13a-13 promulgated thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1,
12 240.13a-11, and 240.13a-13] by knowingly providing substantial assistance to an issuer which has
13 a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78j] or
14 Section 15(d) of the Exchange Act [15 U.S.C. § 78o] in failing to file with the Commission such
15 accurate and complete information, reports, and documents as are required to be filed with the
16 Commission pursuant to Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and the
17 Commission's rules thereunder, including but not limited to, quarterly reports on Form 10-Q
18 [17 C.F.R. § 249.308] as prescribed by Commission Rule 13a-1 [17 C.F.R. § 240.13a-13], current
19 reports on Form 8-K [17 C.F.R. § 249.308] as prescribed by Commission Rule 13a-11 [17 C.F.R.
20 § 240.13a-11], and annual reports on Form 10-K [17 C.F.R. § 249.308] as prescribed by
21 Commission Rule 13a-1 [17 C.F.R. § 240.13a-1], such information and documents to contain, in
22 addition to such information as is expressly required to be included in a statement or report to the
23 Commission, such further material information, if any, as may be necessary to make the required
24 statements, in the light of the circumstances under which they are made, not misleading, as
25 prescribed by Commission Rule 12b-20 [17 C.F.R. § 240.12b-20].

26 III.

27 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and
28 Defendant's agents, servants, employees, attorneys, and all persons in active concert or

1 participation with any of them, who receive actual notice of this Final Judgment, by personal
2 service or otherwise, and each of them, are permanently enjoined and restrained from aiding and
3 abetting any violation of Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)] by
4 knowingly providing substantial assistance to any issuer which has a class of securities registered
5 pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or Section 15(d) of the Exchange
6 Act [15 U.S.C. § 78o] in failing to make or keep books, records or accounts, which, in reasonable
7 detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer.

8 IV.

9 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and
10 Defendant's agents, servants, employees, attorneys, and all persons in active concert or
11 participation with any of them, who receive actual notice of this Final Judgment, by personal
12 service or otherwise, and each of them, are permanently enjoined and restrained from aiding and
13 abetting any violation of Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)] by
14 knowingly providing substantial assistance to any issuer which has a class of securities registered
15 pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or Section 15(d) of the Exchange
16 Act [15 U.S.C. § 78o] in failing to devise and maintain a system of internal accounting controls
17 sufficient to provide reasonable assurances that:

18 A. transactions are executed in accordance with management's general or specific
19 authorization;

20 B. transactions are recorded as necessary (i) to permit preparation of financial
21 statements in conformity with generally accepted accounting principles or any other criteria
22 applicable to such statements, and (ii) to maintain accountability for assets;

23 C. access to assets is permitted only in accordance with management's general or
24 specific authorization; and

25 D. the recorded accountability for assets is compared with the existing assets at
26 reasonable intervals and appropriate action is taken with respect to any differences.

27
28

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with any of them, who receive actual notice of this Final Judgment, by personal service or otherwise, and each of them, are permanently restrained and enjoined from violating Section 14(a) of the Exchange Act [15 U.S.C. § 78n(a)] and Rule 14a-9 promulgated thereunder [17 C.F.R. § 240.14a-9] by making or causing to be made solicitations by means of a proxy statement, form of proxy, notice of meeting, or other communication, written or oral, containing a statement which, at the time and in the light of the circumstances under which it was made, was false or misleading with respect to any material fact, or which omitted to state any material fact necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter which has become false or misleading.

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for disgorgement of \$536,692, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$115,989. Defendant shall satisfy this obligation by paying \$652,681 within ten (10) business days after entry of this Final Judgment by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission. The payment shall be delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-3, Alexandria, Virginia, 22312, and shall be accompanied by a letter identifying John F. Gifford as a defendant in this action; setting forth the title and civil action number of this action and the name of this Court; and specifying that payment is made pursuant to this Final Judgment. Defendant shall simultaneously transmit photocopies of such payment and letter to the attention of Marc J. Fagel, Associate Regional Director, San Francisco Regional Office. United States Securities and Exchange Commission, 44 Montgomery Street, Suite 2600, San Francisco, California, 94104. Defendant shall pay post-judgment interest on any

1 delinquent amounts pursuant to 28 U.S.C. § 1961. The Commission shall remit the funds paid
2 pursuant to this paragraph to the United States Treasury.

3 VII.

4 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant shall pay a
5 civil penalty in the amount of \$150,000 pursuant to Section 20(d) of the Securities Act and
6 Section 21 (a) of the Exchange Act. Defendant shall make this payment within ten (10) business
7 days after entry of this Final Judgment by certified check, bank cashier's check, or United States
8 postal money order payable to the Securities and Exchange Commission. The payment shall be
9 delivered or mailed to the Office of Financial Management, Securities and Exchange Commission,
10 Operations Center, 6432 General Green Way, Mail Stop 0-3, Alexandria, Virginia, 22312, and
11 shall be accompanied by a letter identifying John. F. Gifford as a defendant in this action; setting
12 forth the title and civil action number of this action and the name of this Court; and specifying that
13 payment is made pursuant to this Final Judgment. A copy of the cover letter and money order or
14 check shall be sent to Marc J. Fagel, Associate Regional Director, San Francisco Regional Office,
15 United States Securities and Exchange Commission, 44 Montgomery Street, Suite 2600,
16 San Francisco, California 94104. Defendant shall pay post-judgment interest on any delinquent
17 amounts pursuant to 28 USC § 1961. The Commission shall remit the funds paid pursuant to this
18 paragraph to the United States Treasury.

19 VIII.

20 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is
21 incorporated herein with the same force and effect as if fully set forth herein, and that Defendant
22 shall comply with all of the undertakings and agreements set forth therein.

23 IX.

24 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain
25 jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

26 X.

27 There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil
28 Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further notice.

1 PRESENTED BY:

2

3

4 ~~Helene L. Morrison~~ / *sw*

5 Marc J. Fagel

6 Cary S. Robnett

7 Robert S. Leach

8 Erin E. Schneider

9 Attorneys for Plaintiff

10 SECURITIES AND EXCHANGE COMMISSION

11 44 Montgomery Street, Suite 2600

12 San Francisco, California 94104

13 Telephone: (415) 705-2500

14 Fax: (415) 705-2501

15 APPROVED AS TO FORM:

16

17

18 David Siegel, Esq.

19 Irell & Manella LLP

20 1800 Ave of the Stars, Suite 900

21 Los Angeles, CA 90067

22 Telephone: (310) 277-1010

23 Fax: (310) 203-7199

24

25 ATTORNEY FOR DEFENDANT JOHN F. GIFFORD

26

27

28 Dated this 23 day of January, 2007

Ronald M. White
UNITED STATES DISTRICT JUDGE